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6 **UNITED STATES DISTRICT COURT**  
7 **DISTRICT OF NEVADA**  
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9 UNITED STATES OF  
10 AMERICA,

11 Plaintiff,

12 v.

13 RICHARD LEE CANTERBURY,

14 Defendant.  
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Case No. 2:16-cr-00107-KJD-PAL

**ORDER**

17 Presently before the Court is Defendant's Motion for Dismissal for the  
18 Violation of the Fourteenth Amendment (#86), Motion for Dismissal for the  
19 Violation of the Sixth Amendment, Speedy Trial Act, and Federal Rule of  
20 Criminal Procedure 48 (#87), and Motion for Dismissal for the Violation of the  
21 Eighth Amendment (#88). Also before the Court is Defendant's Motion  
22 Requesting Additional Law Library Time to Prepare for Trial (#84). Also before  
23 the Court is Defendant's Motion Concerning Basic Medical Care (#85).

24 **I. Background**

25 On April 6, 2016, Defendant Richard Lee Canterbury was charged with  
26 violation of 18 U.S.C. § 2113(a). Defendant's trial was originally set for June

1 20, 2016. As of now, Defendant has received seven continuances of his trial  
2 date. Additionally, Defendant has had four attorneys representing him in this  
3 matter thus far. On January 25, 2018, the Court granted Defendant's Motion to  
4 Allow Self Representation, and Thomas Ericsson, who was Defendant's fourth  
5 appointed attorney, remained appointed as Stand-By Counsel. Defendant  
6 requested different Stand-By Counsel, but the Court denied his request, finding  
7 no good cause to grant it.

8 On January 31, 2018, Defendant requested an additional six-month  
9 continuance to prepare his defense for his trial. The Court denied Defendant's  
10 request, and instead granted the parties' stipulation to a two-week continuance,  
11 setting trial for February 20, 2018 at 9:00 AM. On February 6, 2018, Defendant  
12 filed the present five motions.

## 13 **II. Analysis**

14 Defendant alleges numerous Constitutional violations, and that such  
15 violations are grounds for dismissal of his charges. Defendant also moves for  
16 more time to prepare his defense, and moves to have the Court intervene in the  
17 handling of his medical needs during his pre-trial detention.

18 As a preliminary matter, the Court set a deadline of May 13, 2016, for any  
19 and all pretrial motions (#14, Order Regarding Pretrial Procedure). Thus,  
20 Defendant's failure to timely file all present pretrial motions by the pretrial  
21 motion deadline, and failure to show good cause for the untimely filing, is  
22 grounds enough for their denial. See LCR 12-1. However, the Court will still  
23 address the merits of each motion in turn. Any contention not specifically  
24 addressed lacks merit enough to be considered.

1           A. Motion to Dismiss for Fourteenth Amendment Violation

2           Defendant argues his Fourteenth Amendment rights have been violated,  
3 stating his eyesight has been neglected, that there has been indifference  
4 regarding his prescription eyewear, and that his eyesight handicap has “doomed”  
5 his right to a fair trial. Under the Fourteenth Amendment, the pretrial detainee  
6 has a right to be free from conditions or deprivations that amount to punishment.  
7 Bell v. Wolfish, 441 U.S. 520, 535 (1979). However, “[l]oss of freedom of  
8 choice and privacy are inherent incidents of confinement . . . [a]nd the fact that  
9 such detention interferes with the detainee’s understandable desire to live as  
10 comfortably as possible and with as little restraint as possible during  
11 confinement does not convert the conditions or restrictions of detention into  
12 ‘punishment.’” Id. at 536. Permissible restrictions and conditions may be  
13 discomfoting, and may be things that the detainee would not have to experience  
14 outside of detention, but that does not make them punitive. Id. at 540.

15           The detention center’s failure to provide Defendant with the prescription  
16 glasses he requests is not punishment. It is not punitive in nature, not causing  
17 Defendant any pain, nor is it keeping Defendant from being able to prepare his  
18 defense.<sup>1</sup> The Court understands this may be an inconvenience to Defendant, but  
19 “[c]oncern with minutiae of prison administration can only distract the court  
20 from detached consideration of the one overriding question presented to it: does  
21 the practice or condition violate the Constitution?” Id. at 544 (quoting Wolfish  
22 v. Levi, 573 F.2d 118, 124–25 (2nd Cir. 1979)). The policies and procedures of  
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24           <sup>1</sup>Defendant states he is able to read on the computer when using the zoom feature, and the  
25 Court has granted his motion to have all future motions and correspondences printed in size 15 font  
26 where possible.

1 the detention center “are peculiarly within the province and professional  
2 expertise of corrections officials, and, in the absence of substantial evidence in  
3 the record to indicate that the officials have exaggerated their response to these  
4 considerations, courts should ordinarily defer to their expert judgment in such  
5 matters.” Pell v. Procunier, 417 U.S. 817, 826 (1974). Finding no punitive  
6 deprivation, this Court defers to the judgment of the prison officials, and denies  
7 Defendant’s Motion to Dismiss for Violation of the Fourteenth Amendment.

8 B. Motion to Dismiss for the Violation of the Eighth Amendment

9 Defendant alleges his Eighth Amendment rights have been violated  
10 through deliberate indifference to or neglect of his medically necessary  
11 prescription eyewear, and that such indifference amounts to extraordinary  
12 circumstances that no longer allow him a fair trial. Claims by pretrial detainees  
13 are analyzed under the Fourteenth Amendment due process clause, rather than  
14 under the Eighth Amendment, as the Eighth Amendment protects individuals  
15 convicted of crimes. Bell, 441 U.S. at 579. As previously analyzed under the  
16 Fourteenth Amendment standard, there has been no violation of Defendant’s  
17 rights. Thus, the Court denies Defendant’s Motion for Dismissal for Violation of  
18 the Eighth Amendment.

19 C. Motion to Dismiss for Sixth Amendment, Speedy Trial Act, and Rule  
20 48 Violation

21 Defendant alleges denial of appropriate prescription eyewear to be a  
22 violation of his Sixth Amendment, Speedy Trial Act, and Rule 48 rights. He also  
23 alleges he did not create any excludable delays under the Speedy Trial Act.

24 When assessing the merits of a claimed violation of the Sixth Amendment,  
25 the Court conducts a balancing test of four separate factors: the length of the  
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1 delay; the reason for the delay; the defendant's assertion of his right; and  
2 prejudice to the defendant. Barker v. Wingo, 407 U.S. 514, 529 (1972). The  
3 Court must determine "whether [the] delay before trial was uncommonly long,  
4 whether the government or the criminal defendant is more to blame for that  
5 delay, whether, in due course, the defendant asserted his right to a speedy trial,  
6 and whether he suffered prejudice as the delay's result." Doggett v. United  
7 States, 505 U.S. 647, 651 (1992).

8 Defendant has gone through four appointed attorneys thus far, and has  
9 himself requested seven continuances of his trial. He has not had to perform his  
10 own research, nor read in depth the materials required to prepare his defense—  
11 up until January 30, 2018, he had appointed counsel to perform such tasks on his  
12 behalf. Further, Defendant cites the detention center's failure to provide his  
13 requested prescription eyewear as cause for an unconstitutional delay of his trial.  
14 However, Defendant fails to state, explain, or allege with any specificity how his  
15 nearsightedness has caused any such delay.

16 Defendant has suffered no prejudice, nor has there been any violation of  
17 the Speedy Trial Act, as a result of his own request to continue to delay trial. In  
18 fact, at his last hearing, Defendant requested an additional six months to  
19 continue to prepare his defense. Defendant cannot circularly continue to request  
20 additional delay, and then allege violations of undue delay, caused by his own  
21 request. When "any post-indictment delay can be attributed to [Defendant], he  
22 waives the right to a speedy trial." United States v. Sandoval, 990 F.2d 481, 481  
23 (9th Cir. 1991).

24 Federal Rule of Criminal Procedure 48 states, "The court may dismiss an  
25 indictment, information, or complaint if unnecessary delay occurs in . . .

1 bringing a defendant to trial.” No unnecessary delay has occurred, other than  
2 that which Defendant has self-imposed. Thus, this Court denies Defendant’s  
3 Motion to Dismiss based on alleged violation of Sixth Amendment, Speedy  
4 Trial Act, and Rule 48 rights.

5 D. Motion for More Time in the Law Library

6 Defendant requests this Court allow him additional law library time to  
7 prepare for trial. Defendant states he currently has an unspecified number of  
8 afternoon law library sessions, and is able to prepare in his cell for about two  
9 hours per day on afternoons that the law library sessions are not scheduled.  
10 Defendant requests “as much law library time as possible to prepare for trial.”

11 First, prison officials “should be accorded wide-ranging deference in  
12 adoption of policies and practices that in their judgment are needed to preserve  
13 internal order and discipline and to maintain institutional security.” Bell, 441  
14 U.S. at 540. As such, the Court defers to the rules and policies of the detention  
15 center with regard to the time detainees are allowed to spend in the law library.  
16 However, evaluating the facts at hand, Defendant’s case is not one that requires  
17 intensive library time, as it is not factually nor legally complex. Defendant has a  
18 single charge pending, the facts and law of which are straightforward. He has  
19 had well over a year to prepare, has had the assistance of four separate appointed  
20 attorneys, and has made the choice to represent himself. Thus, the Court denies  
21 Defendant’s Motion requesting additional time in the law library.

22 E. Motion Concerning Basic Medical Care

23 Defendant alleges he was examined by a foot doctor in November 2017,  
24 and that the doctor recommended he be supplied with specific shoes to assist  
25 him with his particular needs. Defendant alleges that the Marshals are aware of  
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1 this doctor's recommendation, and have not provided him with the  
2 recommended shoes. However, Defendant provides no proof of diagnosis,  
3 prescription, nor request from that doctor, nor proof that the examination took  
4 place. Defendant's pre-trial detention conditions are a matter to be governed by  
5 the administrative procedures of the detention center. That is not to say that  
6 prison officials are excused from any failure to provide Defendant with  
7 requested and required medical care; however, without acute proof of these  
8 alleged indifferences, it is inappropriate for the Court to intervene.

9 Defendant appears to be attempting to shoehorn a prisoner civil rights  
10 action into the present untimely pretrial motions. He has administrative  
11 procedures available to him, and the option of filing a formal civil complaint.  
12 However, what he alleges here does not amount to a violation of any of the  
13 aforementioned Constitutional standards that apply to pretrial detainees. Thus,  
14 the Court denies Defendant's Motion Concerning Basic Medical Care.

#### 15 F. Delay Tactic

16 As Defendant now represents himself, the Court has taken this opportunity  
17 to address all of his allegations in full, and lay to rest Defendant's concerns that  
18 his Constitutional rights have been violated. There has been no such violation,  
19 and any future attempt by Defendant to file additional motions on any of the  
20 issues this Court has presently resolved or to justify the need for yet another  
21 continuance will be treated as inappropriate attempts to delay. Trial commences  
22 February 20, 2018, at 9:00 AM in Courtroom 4B.

#### 23 III. Conclusion

24 Accordingly, IT IS HEREBY ORDERED that Defendant's Motion for  
25 Dismissal for the Violation of the Fourteenth Amendment (#86) is **DENIED**;


1 IT IS FURTHER ORDERED that Defendant's Motion for Dismissal for  
2 the Violation of the Sixth Amendment, Speedy Trial Act, and Federal Rule of  
3 Criminal Procedure 48 (#87) is **DENIED**;

4 IT IS FURTHER ORDERED that Defendant's Motion for Dismissal for  
5 the Violation of the Eighth Amendment (#88) is **DENIED**;

6 IT IS FURTHER ORDERED that Defendant's Motion Requesting  
7 Additional Law Library Time to Prepare for Trial (#84) is **DENIED**;

8 IT IS FURTHER ORDERED that Defendant's Motion Concerning Basic  
9 Medical Care (#85) is **DENIED**.

10 DATED this 9th day of February, 2018.

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Kent J. Dawson  
14 United States District Judge  
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